IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10317 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SOMNATH M JOSHI

Versus

G S R T C

Appearance:

1. Special Civil Application No. 10317 of 1993

Mr. MH Rathod for Petitioner.

MR HARDIK C RAWAL for Respondents.

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 07/04/2004

ORAL JUDGEMENT

The petitioner who was serving as Conductor had preferred the present Special Civil Application under Article 226 of the Constitution of India challenging the order No. 173/93 passed by respondents dated 21st August 1993 and also order of recovery dated 27th September 1993.

2. It is the contention of the petitioner that the petitioner was serving as a Conductor with the respondent Corporation and on July 4, 1979 while he was in-charge of the bus on the route between Tevada and Radhanpur, his bus was checked and it was found that he had received fare from certain passengers and had not issued tickets and from certain passengers he had neither received the fare nor issued tickets. On the aforesaid allegations, departmental inquiry was held against him and he was found guilty of the misconduct charged. At the conclusion of the departmental inquiry he was ordered to be dismissed from service as per order dated July 31, 1980. In appeal preferred by him the order of dismissal from service was set aside and it was ordered that he be placed on the basic salary of Rs. 180 as Conductor for a period commencing from 2nd July 1980 to 7th May 1987 and the intervening period be treated as leave without pay. The [petitioner raised industrial dispute and sought reference and in the reference the Industrial Tribunal recorded evidence and after hearing the parties the Tribunal held that there was no dishonest intention to misappropriate any amount of the Corporation and the Tribunal ordered to modify the punishment imposed by the disciplinary authority and directed that the order of punishment passed by the 1st appellate authority reducing the workman at the minimum of basic pay of Rs. 180 and treating the intervening period as leave without pay be set aside and it was directed that the workman shall be put to the minimum of the basic pay for a period of one year commencing from 8th May 1981 to 7th May 1982 and it was further ordered that from 8th May 1982 onwards the workman be treated as if no punishment has been imposed upon him and he shall be awarded all the increments and other benefits which he would have been otherwise entitled to.

3. It is the contention of the petitioner that being aggrieved and dissatisfied with the aforesaid judgment and order passed by the Industrial Tribunal, Ahmedabad, dated 4th July 1986 passed in Reference (IT) No. 79 of 1983, the respondent Corporation preferred a petition before this Court being Special Civil Application No. 1831 of 1987 which came to be heard by the Division Bench of this Court (Coram: A.P. Ravani and C.V. Jani, JJ.) and this Court by judgment and order dated 15th June 1993 partly allowed the aforesaid petition and modified the order of punishment imposed by the Industrial Tribunal, and it was further ordered that the workman, i.e., the petitioner shall be placed at the minimum of his pay-scale for a period of 3 years from 8th May 1981 to 7th May 1984 and only 50% of his backwages for the period

during which he remained out of employment, i.e. from 2nd August 1980 to 7th May 1981 be paid to him.

4. It is the case of the petitioner that pursuant to the judgment and order passed by this Court in the above Spl.C.A. No. 1831 of 1987, an order came to be passed by the respondent Corporation dated 21st August 1993 by which salary of the petitioner was fixed at the minimum of the pay-scale as on 7th May 1984 and accordingly further salary of the petitioner was fixed and though the petitioner was getting the salary of RS. 1329/-, the same has been reduced to Rs. 1218 and by subsequent order dated 27.9.1993 an order with regard to recovery of Rs. 16,926.30 ps. came to be passed. On the basis of the aforesaid order of pay fixation which was on the basis of the judgment and order passed by this Court in aforesaid Spl. C.A., order of recovery by monthly instalment of Rs. 1000 from his salary was passed.

5. Shri M.H. Rathod, learned advocate appearing on behalf of the petitioner has submitted that the petitioner had served a legal notice upon the respondent dated 16.9.1993 pointing out that the Corporation has misinterpreted the judgment and order passed by this Court in aforesaid Special civil Application and by misinterpreting the judgment and order passed by this Court they have fixed salary of the petitioner as on 7th May 1984 at the minimum of his pay-scale. It is further submitted that in fact on true interpretation of the judgment and order passed by this Court in aforesaid Special Civil Application and considering the judgment and award passed by the Industrial Tribunal dated 4.7.1986, what was required to be done by the Corporation was to place the petitioner at the minimum of his pay-scale for a period of 3 years from 8th May 1981 to 7th May 1984 and from 8th May 1984 onwards the petitioner was required to be treated as if no punishment has been imposed upon him and he should have been awarded all the increments and other benefits which he would have been otherwise entitled to. From the bare reading of the order passed by the respondent Corporation by fixing the salary of the petitioner on the basis of the judgment passed by this Court in aforesaid Spl.C.A., it is crystal clear that even after 7th May 1984 the petitioner was continued to be in the minimum of the pay-scale on and after 8th May 1984 and while fixing the salary of the petitioner as on 8th May 1984 the increments which are available to the petitioner for the interregnum period between 8th May 1981 to 7th May 1984 are not counted and calculated and therefore injustice was caused to the petitioner and hence has prayed for quashing and setting

aside the impugned order. It is also further submitted by Mr. M.H. Rathod that so far as the order of recovery dated 27th September 1993 is concerned, apart from the fact that it is on the basis of misinterpretation of the order passed by this Court in aforesaid Special Civil Application the same is also against the principles of natural justice, as before passing the impugned order dated 27th September 1993 no opportunity of being heard has been given to the petitioner and therefore requested to quash and set aside the said order dated 27th September 1993 also.

6. On the other hand, Shri Hardik Rawal, ld. advocate appearing on behalf of the respondents has submitted that they have complied with the judgment and order passed by this Court in the aforesaid Special Civil Application in its true spirit. It is also submitted by him that the fixation which is done by the petitioner by order dated 21.9.1991 is on correct and true interpretation of the order passed by this Court and therefore requested to dismiss the present Special Civil Application. He has also submitted that the order dated 27th September 1993 was only a consequential order pursuant to the earlier order of 21st August 1993 and therefore hearing was not required to be afforded to the petitioner and therefore requested to dismiss the Special Civil Application.

7. I have heard the learned advocates appearing for the parties. The Industrial Tribunal by its order dated 4.7.1986 had held that the workman shall be put to minimum of the basic pay for a period of one year commencing from 8.5.1981 to 7.5.1982 and it was further ordered that from May 8, 1982 onwards the workman be treated as if no punishment has been imposed upon him and he shall be awarded all the increments and other benefits which he would have been otherwise entitled to. Now, that order which was passed by the Industrial Tribunal came to be modified by this Court in its judgment and order dated 15th June 1993 in aforesaid Special Civil Application No. 1831 of 1987 to the extent that instead of one year the petitioner was ordered to be placed at the minimum of his pay-scale for a period of 3 years from 8th May 1981 to 7th May 1984 and the rest of the judgment and award passed by the Industrial Court, Ahmedabad dated 4.7.1986 in Reference IT No. 79 of 1983 was not disturbed meaning thereby after completion of the aforesaid 3 years, i.e., after 8th May 1984 the petitioner was required to be treated as if no punishment has been imposed upon him and he was required to be awarded all the increments and other benefits which he

would have been otherwise entitled to. On correct interpretation of the aforesaid judgment and award passed by the Industrial Tribunal as well as the judgment and order passed by this Court dated 15th June 1993 in the aforesaid Special Civil Application, it is crystal clear that while fixing the salary of the petitioner as on 8th May 1984 the increments which were required to be released for the interregnum period between 8th May 1981 to 7th May 1984 were required to be considered for the purpose of fixing salary of the petitioner and it has not been done by the respondent Corporation while passing the impugned order dated 21.9.1993 and it seems that as on 8th May 1984 the salary of the petitioner was fixed at the minimum of the pay-scale without considering the increments which the petitioner would have got for the interregnum period between 8th May 1981 to 7th May 1984, and considering the salary of the petitioner at the minimum of the pay-scale of RS. 180/= per month as on 7th May 1984 further salary of the petitioner has been fixed.

According to me, the respondent Corporation has fallen in error in considering the salary of the petitioner at the rate of RS. 180 per month as on 8th May 1984. While considering the salary of the petitioner as on 7th/8th May 1984, 3 increments which the petitioner would have got for the interregnum period between 8th May 1981 to 7th May 1984 were required to be considered, which has not been done by the respondent Corporation, and in that view of the matter the impugned order dated 21st August 1993 is required to be quashed and set aside to the aforesaid extent by directing the respondent Corporation to fix the salary of the petitioner as on 8th May 1984 along with three increments which the petitioner would have got for the period between 8th May 1981 to 7th May 1984 for the purpose of fixation of salary as on 8th May 1984 and to fix the further salary accordingly on the basis of the aforesaid fixation, and the respondent Corporation is required to be directed to refix the salary of the petitioner on the aforesaid basis and calculate the salary which the petitioner would have got subsequently. In view of the fact that the impugned order dated 21.8.1993 is required to be quashed and set aside, the consequential order passed by the respondent Corporation dated 27.9.1993 is also required to be quashed and set aside and recovery, if any, made by the respondent Corporation on the basis of the impugned order dated 27.9.1993 is also required to be refunded to the petitioner. This Court could have quashed and set aside the impugned order dated 27.9.1993 on the ground of violation of principles of natural justice also, but in

view of the fact that as the order dated 21.8.1993, on the basis of which the order dated 27.9.1993 is passed itself is quashed and set aside the impugned order dated 27.9.1993 is required to be quashed and set aside on that ground alone.

8. For the reasons stated above, the petition succeeds. The impugned order dated 21.8.1993 passed by the respondent Corporation fixing and considering the salary of the petitioner as on 8th May 1984, i.e., on completion of the punishment imposed upon the petitioner at the rate of Rs. 180 per month is hereby quashed and set aside. The petitioner is required to be put in the pay-scale as on 8th May 1984 considering the increments which the petitioner could have got for the interregnum period between 8th May 1981 to 7th May 1984 and the petitioner is required to get the salary on the basis of the aforesaid pay-scale. The respondent Corporation is directed to refix the salary of the petitioner after considering the pay-scale of the petitioner as on 8th May 1984 as stated hereinabove and to give all consequential benefits available to the petitioner accordingly. Such an exercise is required to be done by the respondent Corporation within a period of 3 months from the date of receipt of writ of this Court. As the order dated 21.8.1993 itself is quashed and set aside by this Court, the consequential order with regard to recovery dated 27.9.1993 is also quashed and set aside. It is further ordered that the recovery, if any, made by the respondent Corporation pursuant to the order dated 27.9.1993 is required to be refunded to the petitioner along with 7&1/2 per cent interest from the date of recovery and the petitioner is required to be refunded the aforesaid amount if the recovery is already made within a period of 2 months after the exercise with regard to refixation of the salary of the petitioner is done pursuant to the order passed by this Court in the present Special Civil Application.

10. Rule is made absolute accordingly with no order as to costs.

rmr. [M.R. Shah, J.]